



# Legislative Update

## Covering Criminal Justice Legal Issues

Department of Public Advocacy

No. 4, 1999

### Daviess Defender Office Expands To Full-Time Program. Senator Wendell Ford is Honored as Father of PD System

The Department of Public Advocacy (DPA) opened a new state office for an expanded public defender program in Daviess County on January 4, 1999 and had the opening ceremony on January 29, 1999. Attending the ceremony were **Senator Wendell Ford**, creator of the state's public defender program in 1972 when he served as Governor of Kentucky; **Redmon Lair**, Deputy Secretary, Public Protection and Regulation Cabinet; and **Ernie Lewis**, Public Advocate.

The Daviess County public defender's office is responsible for representing all poor people accused of crimes where jail time or a fine of \$500 or more can be imposed. Services were previously provided by three part-time attorneys. This office in 1998, reported handling 1,942 circuit and district court cases. To address this chronic case overload there and elsewhere, DPA requested and received an additional \$2.3 million in funding from the 1998 legislature. This funding allowed DPA to open the Daviess County office, as well as new offices in Columbia and Paintsville. Full-time defenders now serve 73 of Kentucky's 120 counties.

The Daviess County Public Advocacy Office is staffed by **Rob Sexton**, Directing Attorney, **Jerry L. Johnson** and **Stephanie R. Baisden**. **Kim Shown** is the office's legal secretary.

At the opening, Ernie Lewis said, "I am very excited to welcome you to the grand opening of DPA's newest full-time public defender office. Twenty-six years ago a young Governor spoke these words:

Kentucky becomes one of few states in the union to meet realistically the intent of the Sixth Amendment and Section 11 of our own state constitution. It has been said that the quality of a nation's civilization depends on the way it enforces its criminal laws. And there can be no civilized enforcement of criminal law without full legal assistance to the accused. This we shall have! I am today announcing a public defender program for the Commonwealth of Kentucky.

That same Governor ordered public defender systems be set up in each judicial circuit within 90 days. That day DPA was born. Twenty-six years later, we stand in the hometown of that Governor to announce a major initiative: The opening of the Owensboro Public Defender Office. This is long overdue. Daviess is a thriving county of 100,000. It is Kentucky's third largest city. Owensboro is one of the industrial hubs of Western Kentucky. Last year almost 2000 poor citizens needed a public defender in Owensboro.

We have increased the public defender resources in Daviess County. We will bring improved service to this community.

Lewis said, "Something else is also overdue: DPA recognizes today Senator Ford as *the Father of the Kentucky Public Defender System*. He has devoted a lifetime to serving Kentuckians. As Senator Byrd recently said about Wendell Ford that he is "a vigilant defender of the interests of his native Kentuckians."

He has served tobacco farmers, coal miners, and poor people in need of justice. Thank you Senator Ford for your vision of a public defender system.

In presenting office Directing Attorney Rob Sexton with a copy of the Kentucky Bill of Rights to grace the office, Public Advocate Lewis quoted Senator Ford, in a May 11, 1973 speech in which Governor Ford said to the first Public Advocate Tony Wilhoit:

Your job, just as mine, is to serve the people. You must be prepared and I know you will be, to champion the causes of many whose cases are not popular.

Awards were also given to **Ben Hawes**, **Robert Render**, and **Bill Barber** for their years of service to public defender clients.

In accepting his award, **Senator Wendell Ford** said "I am proud to have played a role in the establishment of the Kentucky public defender system in 1972. At that time, the creation of the public defender system significantly advanced efforts to fulfill our Constitutional and democratic responsibilities. Today, the opening of a full-time office in Daviess County represents further progress in our efforts to assure a fair and effective criminal justice system throughout the Commonwealth. I commend the Governor and the Department of Public Advocacy for their leadership on this issue."

Deputy Secretary Redmon Lair on behalf of Secretary Laura Douglas and the Public Protection and Regulation Cabinet said, "I want to congratulate the Department of Public Advocacy for their continued support and protection of our commonwealth's poorest citizens. The DPA has worked very hard to ensure that then-Governor Ford's vision -- to provide counsel to every indigent in Kentucky -- has become a reality. Since 1995, thanks to the leadership of the legislature, Governor Patton and Laura Douglas, DPA has

- Seen their funding increase by 45%;
- Opened five full-time offices including Bell County, Henderson, Paintsville and Columbia;
- Enhanced juvenile representation and advanced technological capacity to keep up with growing caseloads.

The seeds that Wendell Ford planted when he established DPA have reaped tremendous benefits for Kentucky citizens. Public Advocacy is working to provide 85% of their more than 100,000 Kentucky clients with quality representation, and this office going full-time brings us closer to meeting that goal.

The cabinet will continue to support the good work of Ernie Lewis and his staff, and we're confident that Daviess County citizens will be well-served with this new office."

**Allen Holbrook**, of the law firm of *Sullivan, Mountjoy, Stainback & Miller*, and President of the Daviess County Bar Association said, "The legal community of Daviess county welcomes the establishment of a full-time public advocate office. The increasing caseload on our local public defender corporation was becoming unmanageable, despite the best efforts and commitment of the lawyers to handle that caseload."

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## Blue Ribbon Group Begins

"However, we strongly believe that the time has come to prepare a comprehensive plan, designed to assure that the Kentucky Department of Public Advocacy can reclaim its heralded stature of 1972—as a model statewide public defender system—as it enters the 21<sup>st</sup> Century. To achieve that goal, DPA must have the cooperation of all three branches of government, as well as the organized bar and the citizens of the Commonwealth. The long-term approach needs a documented goal, a comprehensive statewide approach and a group of prestigious leaders of all segments of government, the organized bar and the business community to assure success." Bob Spangenberg in *The Kentucky Department of Public Advocacy, A Preliminary Review* (January 1998).

### The BRG Membership

The call for a group of prestigious leaders has been heard, and the Blue Ribbon Group has been formed in response. This Group is co-chaired by former Justice Robert Stephens, who is now the Secretary of the Justice Cabinet, and Mike Bowling, Middlesboro lawyer and former Chair of the House Judiciary Committee. The Group is diverse and impressive, consisting of members of the executive, Ronald B. McCloud, Secretary of the Public Protection and Regulation Cabinet; judiciary, including Chief Justice Lambert and Judge Denise Clayton; former Congressman Scotty Baesler; the legislature, including Senate President Larry Saunders, Rep. Harry Moberly, Sen. David Williams, Rep. Kathy Stein, Rep. Jeff Hoover; the organized bar, including KBA President Dick Clay and future President Don Stepner; business, including Richard Dawahare of Lexington's Dawahare's Co., and Laura Douglas, Vice-President and General Counsel of Louisville Water Co. and former Public Protection and Regulation Cabinet Secretary; academia, including Professor Robert Lawson of the University of Kentucky; a member of the Executive Branch, Criminal Justice Council Executive Director Kim Allen; prosecution, Commonwealth's Attorney Phil Patton; individual members of the Bar, including former Rep. Jim Lovell, and former Commission member Bob Carran; and members of the Public Advocacy Commission, John Rosenberg who is also Director of Appalachian Research and Defense Fund, and Robert Ewald, Chair of the Public Advocacy Commission.

### The First Meeting

The BRG met for the first time on March 5, 1999, at the Kentucky Bar Center. Robert Stephens and Mike Bowling began the meeting expressing strong support for the enterprise in which the Group was engaged. Both affirmed the need for adequate funding for public defenders, and expressed confidence that the BRG could help solve the problems of the Kentucky Public Defender system.

The BRG agreed upon the following mission statement: "To address the chronic problems of the Kentucky public defender system and propose solutions in light of national information and standards, in order to create a strategy for ensuring an appropriately funded indigent defense system for the 21<sup>st</sup> Century."

Ernie Lewis addressed the BRG and summarized the problems from his perspective. Those problems are:

- Chronic Underfunding.
- Per case funding of \$183 overall.
- DPA receives only 2.61% of the Kentucky criminal justice budget. The Kentucky criminal justice budget receives only 5.43% of the General Fund.
- Prosecutors are funded at over 3 times what public defenders receive in Kentucky.
- Public defenders represent 84% of the circuit court caseload of Commonwealth's Attorneys yet receive only 1/3 of the funding.
- By July 2000, 41 counties will still be served by part-time prosecutors.

- 25-50% of juveniles go unrepresented in Kentucky
- Juvenile defenders' caseloads are much too high. In Louisville caseloads are at 843 per lawyer, while in Lexington they are at 1198 per lawyer. This compares unfavorably to a national standard of 200 per year per lawyer.
- Public defender salaries are much too low. Starting salaries are at \$23,000 in Lexington and Louisville, and at \$23,388 in the state system. This is the lowest level of any of the surrounding states, which average \$34,000 for entry-level public defenders.
- Directing attorney starting salaries are \$38,000. This compares unfavorably to the full-time Commonwealth's Attorney who earns a starting salary of \$81,000.
- Many public defenders have huge student loans, averaging \$39,937. One public defender has a \$135,000 student loan. 8 attorneys have loans between \$50,000-\$100,000. Only 2 of 35 have loan forgiveness programs from their law schools.
- The salaries and student loans have led to a turnover rate in the state of 12%, in Louisville of 27% last year, and in Lexington of 53% last year.
- Caseloads remain much too high. In FY 97-98, caseloads averaged 480 per lawyer at the trial level. In Louisville, they were at 700, while in Lexington they were at 545. Other caseloads were as follows: Ashland-- 737, Henderson-- 767, Madisonville—596, Paducah—485. The new Owensboro Office has projected caseloads of 647.
- Many new laws from 1998 General Assembly were not funded, including prerelease probation, Megan's Law, gang litigation, hate crime litigation, methamphetamine, alternative sentencing, and juvenile supervised placement revocation hearings.
- Many of DPA's programs are funded through the 3 revenue sources, the DUI Service Fee, the administrative fee, and recoupment. These include the Henderson, Madisonville, Bell, Elizabethtown, and Covington Offices, as well as positions in Richmond, Somerset, Pikeville, the Appellate Branch, the Capital Post-Conviction Branch, and the Capital Trial Branch. We are falling behind \$700,000 per year in collecting sufficient revenue to cover those programs. Revenue will run out at the present rate in July 2000.
- Private attorneys are not paid adequately in contract counties, conflict cases in full-time offices, of-counsel appeals, and death penalty trials and post-conviction actions.
- The Appellate Branch has only 12 lawyers, compared to 32 in the Attorney General's appellate staff.
- Inmates and juveniles do not have adequate access to courts in their post-conviction actions. Juveniles in detention have no lawyers. While DPA had a Post-Conviction staff of 10 for 3723 inmates in 1980, that grew to only 18 for 14,390 inmates by 1999. No attorneys are available to the almost 2000 inmates in jails on Class D convictions.
- The numbers of support staff in trial offices are not sufficient. There are few if any paralegals or mitigation specialists or alternative sentencing workers in the trial offices. One secretary and one investigator for 3 lawyers are not sufficient support. The result is the work normally done by support staff in a private office is being done by lawyers, or not done at all.
- DPA's infrastructure has not grown with the rest of the staff. Only 2 people in technology support a staff of 250. The training staff of three is not large enough for an entire public defender system. Sufficient support is not available for the public defender system.
- Kentucky remains one of the lowest funded public defender systems in the nation.

**Bob Spangenberg**, consultant for the BRG and head of the nation's preeminent indigent defense consulting firm, compared the Kentucky public defender system to the national scene:

- Kentucky's public defender system remains at or near the bottom of the public defender systems in the nation in terms of funding.
- He compared 1996-1997 figures for 16 states with full-time statewide systems. At \$4.76 per capita at that time, Kentucky was the third from the bottom. Indiana, at \$4.44, had a much higher funding-per-case than Kentucky. Missouri, at \$4.61 at the time, has since gone up to \$5.26 for FY 99. Kentucky was behind in the per capital comparisons to the states of Colorado, Connecticut, Delaware, Louisiana, Maryland, Minnesota, New Mexico, North Carolina, Ohio, Oklahoma, Tennessee, Virginia, West Virginia, and Wisconsin.
- Kentucky was at 15<sup>th</sup> of the 16 comparison states when looking at funding per case. Only Tennessee, at \$180 per case, was lower (yet Tennessee funds its system at \$6.73 per capita).

- Of 20 systems examined, Kentucky had the lowest starting salaries for entry level attorneys.
- Of 13 systems examined, Kentucky had the lowest salaries for directing attorneys. The mid-point for directing attorneys in Kentucky is \$42,084. The midpoints of some of the other systems were \$60, 708 (Colorado), \$65,899 (Virginia), \$54,323 (Oklahoma), \$59,769 (Ohio).
- Kentucky's system of collecting fees from indigent clients cannot make up the money needed to significantly improve the system. Rather, significant General Fund moneys must be appropriated to take Kentucky's public defender system to the level where it is equal to the surrounding and other comparable state systems.

## **Second and Third Meetings**

The second meeting on April 23<sup>rd</sup> focused on proposed solutions compared to the national experience. The third meeting on May 25<sup>th</sup> will focus on the making of decisions regarding the report to be issued by the Blue Ribbon Group. The Group will also discuss strategies to implement the recommendations.

## **Conclusion**

The Blue Ribbon Group consists of exceptional people at the top of their professions. The Department of Public Advocacy is fortunate to have leaders of this caliber willing to use their time to look at our public defender system, to make recommendations, and to work at improving indigent defense in Kentucky.



## Justice Secretary Dan Cherry Leaves Post After Three Years of Service

(FRANKFORT - 2/9/99) - Secretary Dan Cherry left his post as head of the Justice Cabinet - the 6,000-plus employee agency that includes the Department of Corrections and State Police -- to become director of the Inter Modal Industrial Park in South Central Kentucky.

As one of the original members of Governor Paul Patton's Cabinet, Secretary Cherry, of Bowling Green, was appointed in December 1995 and over the last three-plus years has overseen the Department of Corrections, State Police, Juvenile Justice, Criminal Justice Training, and the Parole Board, Medical Examiner, the Criminal Justice Council and Administrative Services.

"This has been a tremendous experience for me to serve in Gov. Patton's administration, and to play a role in helping him to make positive change in Kentucky," Cherry said. "My job has been tremendously challenging and rewarding, and I'm proud to have served a governor with such integrity and intelligence."

Announcing Cherry's resignation, Gov. Patton said, "General Cherry was recruited to join our team when we issued the call for qualified administrators, and he's demonstrated leadership abilities that prove we've been able to attract the best and the brightest to serve the people of Kentucky. It's a compliment that we've kept him for three years, and we'll miss his friendship and commitment. All of us wish him continued success."

As Secretary, Cherry oversaw the implementation of Gov. Patton's Juvenile Justice Department, the Criminal Justice Response Team -- whose work produced the most sweeping criminal justice reforms in a quarter of a century -- and helped establish procedures to handle one of the most difficult jobs: Kentucky's first execution since 1962.

Cherry developed his administrative and leadership skills during his career as a fighter pilot in the United States Air Force which he entered in July 1959 as an Aviation Cadet and was commissioned a Second Lieutenant in July 1960. His military credentials include flying 295 combat missions during the Vietnam War and shooting down a North Vietnamese Mig-21. He is a graduate of the Industrial College of the Armed Forces and the National War College. He holds a bachelor of science degree in mathematics from Florida Southern College and a master of science degree in systems management from the University of Southern California. He completed his service in the Air Force with the rank of Brigadier General.

Cherry said his new position is an exciting opportunity and will allow him to be at home with his family in Bowling Green. His resignation was effective March 1<sup>st</sup>, 1999. Former Chief Justice Robert F. Stephens will replace Secretary Cherry.

"Secretary Cherry's tenure as Justice Secretary will be missed", said Public Advocate Ernie Lewis. "He welcomed me as Public Advocate, and ensured that my positions were heard. He is an excellent leader, and was generous in sharing his ideas on leadership with me. He is a consummate professional, treating all with kindness and respect. He will be missed. Only someone of the stature of Justice Stephens could fill his large shoes."

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## **Kentucky Supreme Court Justice Named to Justice Cabinet Post**

Kentucky's former Chief Justice of the Supreme Court, Robert F. Stephens, has been named to serve Governor Paul Patton's administration as Justice Cabinet Secretary.

Governor Patton made the announcement at a news conference at the state capitol. "Justice Stephens is one of the most respected members of the judicial branch, and at sixteen years, was Kentucky's longest serving chief justice. It's an honor for us to have him serve in our administration," the governor said.

Stephens succeeds Justice Secretary Dan Cherry, who resigned March 1<sup>st</sup> to take a position in his hometown of Bowling Green.

Stephens said, "I'm pleased that Governor Patton has offered me the opportunity to join his team, and to build upon the many accomplishments of the Justice cabinet."

The Covington native, is a University of Kentucky Law School graduate. He has served on the Supreme Court since 1979. He was elected Chief Justice in 1982. He was named outstanding judge of 1986 by the Kentucky Bar Association and in 1996 was inducted into the Warren. E. Burger Society, in recognition of his leadership with the National Center for State Courts and the Kentucky trial courts.

From 1970-75, Stephens served as Fayette County Judge, and from 1975-79, served as Kentucky's Attorney General.

Governor Patton said Stephens will assume his new role with the Justice Cabinet on May 1<sup>st</sup>.

"I am excited that Justice Stephens has agreed to take the position of Justice Cabinet Secretary," said Public Advocate Ernie Lewis. "He has been a visionary and a doer all his life. He understands the criminal justice system, and he is sensitive to the needs of indigent defense. This experience will allow him to build on Secretary Cherry's legacy."

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## Prerelease Probation

Prerelease probation continues to evolve as more and more requests are processed, screened, and reviewed. The program for early release of prisoners enacted by the 1998 Kentucky General Assembly under HB 455 as part of the Governor's Crime Bill and found in KRS 439.575 has generated 681 requests made to the Department of Corrections (as of April 26, 1999). Of those, DOC deemed 263 eligible. 86 of these 681 cases were still pending awaiting an eligibility determination and recommendation by the Kentucky Department of Corrections (DOC). 54 prisoners have been released from DOC custody on prerelease probation. One of these has been returned as a probation violator.

DOC made modifications in the determination of eligibility for prerelease probation in late 1998. This should enhance the chances of some inmates to survive the first round of eligibility determination, especially where an inmate may have had a major institutional rule violation more than a year prior to his/her request for PRP. Since the program went into effect in July 1998, the DOC has had the responsibility to administer the PRP and make its recommendation to the requesting court. DOC has established a period of up to 90 days to process each request from the reviewing court. These factors could explain why only 10 inmates had received PRP according to a January 6, 1999 article in the Louisville Courier Journal and why the number is almost four times that at present with a sizeable number still being processed.

Nevertheless, PRP is still experiencing "growing pains." First, the constitutionality of the program is being challenged in one court. In *Prater v. Commonwealth*, the appellant's brief has been filed in the Kentucky Court of Appeals. The court is being asked to address two issues. First, was the legislature authorized under Kentucky's Constitution to extend the trial court's sentencing power and jurisdiction to include granting prerelease probation or was this an unlawful delegation of an executive function to the trial court, in violation of the separation of powers. Secondly, *Prater*, addresses part of the PRP procedure requiring a favorable recommendation and when this is to be submitted to the court. The constitutional challenge should come as no surprise, especially to veteran Kentucky criminal defense lawyers, who saw a similar challenge to the shock probation statute whose constitutionality was upheld in *Commonwealth v. Williamson*, 492 S.W.2d 874 (Ky., 1973). There the issue focused on the court's ability to regain its jurisdiction after final sentencing. Similar arguments will likely be revisited in *Prater*.

Secondly, there exists some confusion and lack of uniformity in the appointment of counsel in PRP cases. Unfortunately, the PRP statute is silent on this issue both as to when and even if counsel should be appointed. If counsel is not appointed at or shortly after the filing of the motion, then some crucial issues, such as those discussed below, may never be raised or effectively addressed. This can be unduly prejudicial or even fatal to the prisoner's PRP request. This is especially true with challenges to the risk assessment score which many times prevent the inmate from receiving the mandatory favorable recommendation from DOC. This in turn summarily eliminates any chance for the court even to **consider** the inmate for PRP.

Aside from the issue of appointing counsel, there also appears to be some confusion on what the petitioning prisoner must send to the sentencing court for PRP consideration. Some courts are requiring the prisoner to send a DOC recommendation for PRP with the initial prisoner motion for PRP. The problem this creates for the prisoner is that s/he cannot receive any recommendation, favorable or unfavorable, without the court first ordering DOC to undertake its screening and eligibility process. Inadvertently, the court has placed a burden on the prisoner that cannot be overcome. Pro se inmates with varying degrees of legal training could conceivably appeal these orders, seek relief under CR 59.05 or CR 60.02 or try again with a letter to the court. Unfortunately, these approaches are time-consuming for the court and parties. They may likewise preclude otherwise eligible candidates from being fully and fairly considered. The absence of appointed counsel in this situation only makes the problem more cumbersome for the court and inequitable for the inmate.

Additionally, in at least one correctional facility, there is concern about comments that may be made by the Deputy Warden in his recommendation for PRP. These unfavorable comments seem to contradict the low risk



score that mandates a favorable recommendation to the court for PRP.

Finally, the courts will continue to face the close cases where an inmate's risk score is just barely above the low risk level and where there is a factual dispute about a key item. One example illustrates the point superbly. A female inmate received a point score one point above the low risk level, automatically disqualifying her from PRP consideration by the reviewing court. She received one point because there was no juvenile criminal history record stated in her PSI. She maintains she has no juvenile criminal history record, thereby entitling her to 0 points and eligibility for PRP consideration by the court with a favorable recommendation. Unquestionably, her failure to address this scenario effectively will likely be the death knell to her PRP request without help in the form of effective advocacy in the sentencing court.

Obviously, PRP presents both problems and opportunities for the participants in the Kentucky Criminal Justice System. One thing that should not be in dispute is the observation made by Vertner Taylor, DOC Deputy Commissioner for Community Services in a September 1998 article in *The Advocate*, Vol. 20, No. 5 at page 50.

There he offered these words about the changes brought about in the Governor's 1998 Crime Bill:

The Governor's Crime Bill encompasses a large part of the criminal justice system and will have many effects that are not yet obvious. However, it is known that probation and parole caseloads will greatly increase. Cooperation among the various criminal justice agencies is essential if we expect to be effective in protecting the citizens of the Commonwealth.

Likewise, DPA has a duty to protect the rights of those citizens who seek full and fair consideration for PRP relief under this new crime bill.

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**Funding for Kentucky Defenders, Prosecutors, Criminal Justice System**

The real story behind Kentucky criminal justice funding is that the Kentucky criminal justice budget receives only 5.43% of the total state funds, and that DPA receives only 2.7% of that modest criminal justice budget while 7.23% goes to prosecutors. More money goes to criminal justice training, 3.62%, than to indigent defense. Significantly, 11.67% goes to juvenile justice - over 4 times the funding for indigent defense. Corrections receives the highest percentage - 35.80%.

FY 2000 Criminal Justice Budgets, Total Funds		
Agency	Total Funds	% Total
Corrections	\$297,228,700	35.80%
Judiciary	\$172,388,700	20.76%
State Police	\$119,701,400	14.42%
Juvenile Justice	\$96,863,000	11.67%
Prosecution	\$60,028,600	7.23%
Justice Administration	\$31,545,900	3.80%
Criminal Justice Training	\$30,088,000	3.62%
DPA	\$22,433,400	2.70%
<b>TOTAL</b>	<b>\$830,277,700</b>	<b>100.00%</b>

**Defender Salaries Inadequate*****The Prominent Facts on Recruiting & Retaining Quality Public Defender Attorneys Reveal the Inadequacy of the Current Salaries for Kentucky Defenders.***

- The entry level salary for Kentucky public defender attorneys is \$23,388, while it is \$32,913 for the average of the 7 surrounding states or 40.7% more than Kentucky's. Excluding the two highest salaried states, the average salary of the five remaining contiguous states is \$30,614 or 30.9% more than Kentucky's starting salary.
- The salary for a public defender after 3 Years is \$36,288 in Kentucky, while it is \$44,197 for the 7 surrounding states or 22% more than Kentucky's.
- The salary for a public defender after 5 Years is \$38,833 in Kentucky, while it is \$44,246 for the average of the 7 surrounding states or 14% more than Kentucky's.
- The salary for a Directing Attorney in the Kentucky public defender system is \$36,984, while it is \$65,853 for the average of the 7 surrounding states or 78% more than Kentucky's.
- The turnover rate for Kentucky public defender attorneys averages 12% over the last 6 years.
- Private sector compensation of attorneys in Kentucky and nationally far exceeds the compensation of Kentucky public defender attorneys.
- In Kentucky State Government, non-criminal litigation provides attorneys a greater salary than criminal litigation.
- The average student loan of attorneys recently hired by the Department is \$39,000.
- Kentucky State Government allows private attorneys to charge agencies up to \$125 per hour to handle appellate cases. Criminal defense attorneys handling direct appeals for the Department earn a maximum of \$850 for the approximate 40 hours of work they will perform.
- Salary increases of 30% for Kentucky public defender attorneys would provide DPA the ability to recruit and retain quality attorneys.
- The average tenure of an attorney in the Trial Services Division is 2.98 years; compared to an average of 4.36 years in the Post-Trial Services Division.

Salaries paid to public defenders in the seven states contiguous to the Commonwealth directly affect the Department's ability to recruit highly qualified, committed applicants. Of the Department's trial offices, 59% are located in communities that border one of the seven contiguous states. When recruiting applicants for attorney positions in these offices, the salaries paid to public defenders in the contiguous states can provide the main competition.

The average salary in the seven contiguous states paid to a new public defender is \$34,191. Kentucky's salary of \$23,388 is 46% less than the average. If the two highest states (Illinois and Virginia) are removed, the average salary decreases to \$30,614. However, Kentucky's salary of \$23,388 is still 30.9% lower than the five-state

average.

Missouri's starting salary (\$27,504) is the closest to the starting salary paid in Kentucky. The difference of 17.6% directly impacts the ability to recruit for positions in offices close to Missouri, such as Paducah, Eddyville, Hopkinsville, Henderson and Owensboro. Of interest, Missouri also pays a \$1000 per month supplement to attorneys exclusively involved in capital litigation. Missouri also pays supervisors a monthly stipend of \$60 per month per employee supervised. This provides an incentive to assume supervisory responsibilities. In Kentucky, the supervisor salary is the same as the salary paid to attorneys in the "Chief" classification. There is no monetary incentive to assume management responsibilities.

The starting salary paid in Ohio directly affects the Department's ability to recruit new attorneys in border cities such as Covington and Maysville. Likewise, the starting salary paid in Tennessee impacts our recruitment efforts in towns such as Hopkinsville, Bowling Green, London, Pineville and Somerset.

Among regional states with similar service delivery systems, Kentucky's salaries are significantly lower. Tennessee and Missouri both have statewide systems. Kentucky public defender salaries are at least 25% lower than the salaries in each of the other states.

Roy Collins  
Personnel Administrator

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## SEVEN CONTIGUOUS STATES vs. KENTUCKY PUBLIC DEFENDERS

A REVIEW OF THE ENTRY LEVEL STATE/COUNTY PUBLIC DEFENDER SALARIES FOR THE SEVEN STATES SURROUNDING KENTUCKY SHOWS THAT KY. IS \$10,803 (46%) BELOW THE AVERAGE OF THESE STATES. AFTER 3 YEARS OF EMPLOYMENT, KY. SALARIES ARE \$7,909 (22%) BELOW THE AVERAGE OF THE SURROUNDING STATES. AFTER 5 YEARS, KY. IS BELOW THE AVERAGE BY \$12,786 (33%). OFFICE DIRECTING ATTORNEY SALARIES IN KY. ARE \$28,869 (78% BELOW THOSE IN THE SURROUNDING STATES).

	ENTRY LEVEL SALARIES	AFTER 3 YRS	AFTER 5 YRS	DIR. ATTY.
1a. Illinois (Lake Co.)	46,405.00	52,167.00	57,191.00	
1b. Illinois (Cook Co.)	35,828.00	50,519.00	57,553.00	57,553.00
2a. Virginia (Metro DC.)	39,389.00	47,072.00	56,253.00	80,339.00
2b. Virginia	36,032.00	43,059.00	51,459.00	73,491.00
3. Ohio	35,818.00	39,478.00		47,944.00
4. Indiana	31,330.00			
5. West Virginia	30,000.00			
6. Tennessee	28,416.00	38,256.00	42,624.00	91,152.00
7. Missouri	27,504.00	38,828.00	44,640.00	44,640.00
<b>AVERAGE SALARY</b>	<b>34,191.33</b>	<b>44,197.00</b>	<b>51,620.00</b>	<b>65,853.17</b>
<b>KENTUCKY</b>	<b>23,388.00</b>	<b>36,288.00</b>	<b>38,833.20</b>	<b>36,984.00</b>
	<b>10,803.33</b>	<b>7,909.00</b>	<b>12,786.80</b>	<b>28,869.17</b>
	<b>46%</b>	<b>22%</b>	<b>33%</b>	<b>78%</b>

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**Defender Job Time Consuming**(Reprint of article from *The Kentucky Post* 2/23/99)

Paul A. Long, *Post* staff reporter, in an article titled, "Defender job time-consuming / Newport attorney calling it quits" (found at <http://www.kypost.com/news/patton022299.html>), reported, "Robert Patton spent 10 years trying to put people behind bars. He has spent nearly two decades trying to keep them out. Patton, who has been a public defender in Campbell County for nearly as long as there have been public defenders in Campbell County, is leaving the system at the end of the month, citing a caseload that has nearly quadrupled since he first came on the scene.

It's a common complaint of public defenders, who often must deal with low pay, high caseloads and difficult, time-consuming and unpopular cases. For the 55-year-old Patton, the public-defender work forced him to spend too many nights and weekends at the office.

Campbell County hires five attorneys at \$1,375 per month to handle all the misdemeanor and felony cases of those people who are charged with a crime but cannot afford an attorney. The work is considered part time, and the attorneys have a private practice.

In 1998, Patton said he handled nearly 120 cases - mostly felonies - a figure that does not include cases he picked up and closed on the same day. The pay of about \$137 per case is in line with statewide funding of \$139 per case for part-time attorneys, according to figures from the Department of Public Advocacy.

For full-time offices, such as Kenton County, the lawyers' pay averages \$152 per case. Those attorneys did not have their own practices. The money is far below what a lawyer would charge a paying client, said state Public Advocate Ernie Lewis. "Part-time (public defenders) in Kentucky are simply not being paid even their overhead, much less what they charge their private clients," Lewis said in a recent issue of *The Advocate*, a magazine put out by his department.

Every year, Lewis goes to the state General Assembly seeking more funding. In the 1998 legislature, he was successful in persuading lawmakers to increase fees for public defenders.

Lewis also encourages lawyers to ask judges for a payment of some amount from those who use the services of a public defender.

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